

MECHANICS' LIEN AND PAYMENT

AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott K. Jenkins

House Sponsor: Michael T. Morley

LONG TITLE

General Description:

This bill makes changes to a provision related to waiving mechanics' lien rights.

Highlighted Provisions:

This bill:

- ▶ defines the term "receives payment";
- ▶ allows the use of waiver language different from the statutory language;
- ▶ unifies language used for a restrictive endorsement that waives a mechanics' lien right;
- ▶ removes provisions from the statutory waiver form concerning disputed claims;
- ▶ addresses the effect of failure to comply with lien waiver requirements; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

38-1-39, as enacted by Chapter 203, Laws of Utah 2006

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 38-1-39 is amended to read:

30 **38-1-39. Waiver or impairment of a lien right -- Forms -- Scope.**

31 (1) As used in this section:

32 (a) "Check" means a payment instrument on a depository institution including:

33 (i) a check;

34 (ii) a draft;

35 (iii) an order; or

36 (iv) other instrument.

37 (b) "Depository institution" is as defined in Section 7-1-103.

38 (c) "Lien claimant" means a person that claims a lien under this chapter.

39 (d) "Receives payment" means, in the case of a restrictive endorsement, a payee has
40 endorsed a check and the check is presented to and paid by the depository institution on which
41 it is drawn.

42 (2) Notwithstanding Section 38-1-29, a written consent given by a lien claimant that
43 waives or limits the lien claimant's lien rights is enforceable only if the lien claimant:

44 (a) (i) executes a waiver and release that is~~[(A)]~~ signed by the lien claimant or the lien
45 claimant's authorized agent; ~~[and]~~ or

46 ~~[(B) substantially in the form set forth in Subsection (4); or]~~

47 (ii) for a restrictive endorsement on a check, includes a restrictive endorsement on a
48 check that is:

49 (A) signed by the lien claimant or the lien claimant's authorized agent; and

50 (B) in substantially the same form set forth in Subsection (4)(d); and

51 (b) receives payment of the amount identified in the waiver and release or check that
52 includes the restrictive endorsement:

53 (i) including payment by a joint payee check; and

54 (ii) for a progress payment, only to the extent of the payment.

55 (3) (a) Notwithstanding the language of a waiver and release described in Subsection
56 (2), Subsection (3)(b) applies if:

57 (i) the payment given in exchange for any waiver and release of lien is made by check;

58 and

59 (ii) the check fails to clear the depository institution on which it is drawn for any
60 reason.

61 (b) If the conditions of Subsection (3)(a) are met:

62 (i) the waiver and release described in Subsection (3)(a) is null, void, and of no legal
63 effect; and

64 (ii) the following will not be affected by the lien claimant's execution of the waiver and
65 release:

66 (A) any lien;

67 (B) any lien right;

68 (C) any bond right;

69 (D) any contract right; or

70 (E) any other right to recover payment afforded to the lien claimant in law or equity.

71 (4) (a) A waiver and release given by a lien claimant meets the requirements of this
72 section if it is in substantially the form provided in this Subsection (4) for the circumstance
73 provided in this Subsection (4).

74 ~~[(a)-(i)]~~ (b) A waiver and release may be in substantially the following form if the lien
75 claimant is required to execute a waiver and release in exchange for or to induce the payment
76 of a progress billing:

77 "UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

78 Property Name: _____

79 Property Location: _____

80 Undersigned's Customer: _____

81 Invoice/Payment Application Number: _____

82 Payment Amount: _____

83 Payment Period: _____

84 To the extent provided below, this document becomes effective to release and the
85 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,

86 Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors'
87 Bonds, or Section 63-56-504 related to payment rights the undersigned has on the above
88 described Property once:

89 (1) the undersigned [~~receives~~] endorses a check in the above referenced Payment
90 Amount payable to the undersigned; and

91 [~~(2) the check is properly endorsed; and]~~

92 [~~(3)~~] (2) the check is paid by the depository institution on which it is drawn.

93 This waiver and release applies to a progress payment for the work, materials,
94 equipment, or a combination of work, materials, and equipment furnished by the undersigned
95 to the Property or to the Undersigned's Customer which are the subject of the Invoice or
96 Payment Application, but only to the extent of the Payment Amount. This waiver and release
97 does not apply to any retention withheld; any items, modifications, or changes pending
98 approval; disputed items and claims; or items furnished or invoiced after the Payment Period.

99 The undersigned warrants that the undersigned either has already paid or will use the
100 money the undersigned receives from this progress payment promptly to pay in full all the
101 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,
102 equipment, or combination of work, materials, and equipment that are the subject of this
103 waiver and release.

104 Dated: _____

105 _____ (Company Name)

106 _____ By: _____

107 _____ Its: _____ "

108 [~~(ii) A restrictive endorsement placed on a check to effectuate a waiver and release~~
109 ~~described in this Subsection (4)(a) meets the requirements of this section if it is in substantially~~
110 ~~the following form:]~~

111 [~~"This check is a progress payment for (property description sufficient for~~
112 ~~identification). Endorsement of this check is an acknowledgment by the endorser that the~~
113 ~~waiver and release to which the payment applies is effective to the extent provided in Utah~~

114 Code Ann. Subsection 38-1-39(4)(a)."]

115 [(b)(i)] (c) A waiver and release may be in substantially the following form if the lien
116 claimant is required to execute a waiver and release in exchange for or to induce the payment
117 of a final billing:

118 "UTAH [~~CONDITIONAL~~] WAIVER AND RELEASE UPON FINAL PAYMENT

119 Property Name: _____

120 Property Location: _____

121 Undersigned's Customer: _____

122 Invoice/Payment Application Number: _____

123 Payment Amount: _____

124 [~~Amount of Disputed Claims: _____~~]

125 To the extent provided below, this document becomes effective to release and the
126 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,
127 Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors'
128 Bonds, or Section 63-56-504 related to payment rights the undersigned has on the above
129 described Property once:

130 (1) the undersigned [~~receives~~] endorses a check in the above referenced Payment
131 Amount payable to the undersigned; and

132 [~~(2) the check is properly endorsed; and]~~

133 [~~(3)~~] (2) the check is paid by the depository institution on which it is drawn.

134 This waiver and release applies to the final payment for the work, materials, equipment,
135 or combination of work, materials, and equipment furnished by the undersigned to the Property
136 or to the Undersigned's Customer. [~~This waiver and release does not apply to payment of~~
137 ~~Disputed Claims, if any.~~]

138 The undersigned warrants that the undersigned either has already paid or will use the
139 money the undersigned receives from the final payment promptly to pay in full all the
140 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,
141 equipment, or combination of work, materials, and equipment that are the subject of this

142 waiver and release.

143 Dated: _____

144 _____ (Company Name)

145 _____ By: _____

146 _____ Its: _____ "

147 ~~[(ii)]~~ (d) A restrictive endorsement placed on a check to effectuate a waiver and release
148 described in this Subsection (4)~~[(b)]~~ meets the requirements of this section if it is in
149 substantially the following form:

150 "This check is a progress/ final payment for [~~(f)]~~property [~~description~~] described on this
151 check sufficient for identification~~]~~. Endorsement of this check is an acknowledgment by the
152 endorser that the waiver and release to which the payment applies is effective to the extent
153 provided in Utah Code Ann. Subsection 38-1-39(4)(b) or (c) respectively."

154 (e) (i) If using a restrictive endorsement under Subsection (4)(d), the person preparing
155 the check shall indicate whether the check is for a progress payment or a final payment by
156 circling the word "progress" if the check is for a progress payment, or the word "final" if the
157 check is for a final payment.

158 (ii) If a restrictive endorsement does not indicate whether the check is for a progress
159 payment or a final payment, it is considered to be for a progress payment.

160 (5) (a) If the conditions of Subsection (5)(b) are met, this section does not affect the
161 enforcement of:

- 162 (i) an accord and satisfaction regarding a bona fide dispute; or
- 163 (ii) an agreement made in settlement of an action pending in any court or arbitration.

164 (b) Pursuant to Subsection (5)(a), this section does not affect enforcement of an accord
165 and satisfaction or settlement described in Subsection (5)(a) if the accord and satisfaction or
166 settlement:

- 167 (i) is in a writing signed by the lien claimant; and
- 168 (ii) specifically references the lien rights waived or impaired.

169 ~~[(6) A lien waiver or lien release that is not substantially similar to the forms set forth~~

170 ~~in Subsection (4) is not enforceable under Section 38-1-29.]~~